

APPROVED

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Monday, March 8, 1982 Rockville, Maryland

The County Council for Montgomery County, Maryland, convened in the Council Hearing Room, County Office Building, Rockville, Maryland at 1:30 P.M. on Monday, March 8, 1982.

PRESENT

Neal Potter, President  
Scott Fosler  
Ruth Spector

Michael L. Gudis, Vice President  
David Scull  
Rose Crenca

ABSENT

Esther P. Gelman

The President in the Chair.

Re: Worksession on Bill 71-81 -  
Collective Bargaining/Police Officers

The Council met in worksession on Bill 71-81, Collective Bargaining/Police Officers, with Allen J. Katz and George B. Driesen, Attorneys for the Fraternal Order of Police; Robert S. Hillman, Special Counsel to Montgomery County; Edmund Rovner, staff of the County Executive; Clinton Hilliard, Director of Personnel; Council Staff Director McDonell and Deputy Council Staff Director Spengler.

Mr. Hillman reviewed the following new draft language for Section 33-80 which was prepared in an effort to work out language more acceptable to all parties:

~~Sec. 33-80. COLLECTIVE BARGAINING.~~

Sec. 33-80. COLLECTIVE BARGAINING.

(a) Upon certification of an employee organization, as provided in Section 33-79, the employer and the said certified representative shall have the duty, through their designees, to bargain collectively with respect to those subjects as follows:

- (1) Salary and wages, provided however that salaries and wages shall be uniform for all employees in the same classification.
- (2) Pension and retirement benefits for active employees.
- (3) Employee benefits such as, but not limited to, insurance, leave, holidays and vacation.

- (4) Hours and working conditions, including the availability and use of personal patrol vehicles.
- (5) Provisions for the orderly processing and settlement of grievances concerning the interpretation and implementation of the collective bargaining agreement, which may include binding third party arbitration and provisions for exclusivity of forum.
- (6) Matters affecting the health and safety of employees.
- (7) The effect on employees of the employer's exercise of rights enumerated in sub-section (b) hereof.
- (b) Employer Rights.

This Article and any agreement pursuant hereto shall not impair the right and responsibility of the employer:

- (1) To determine the overall budget and mission of the employer and any agency of County government;
- (2) To determine the services to be rendered, and the operations to be performed;
- (3) To determine the overall organizational structure, methods, processes, means, job classifications or personnel by which operations are to be conducted, and the location of facilities;
- (4) To direct or supervise employees;
- (5) To hire, select and appoint and establish the standards governing promotion of employees and to classify positions;
- (6) To relieve employees from duties because of lack of work or funds, or under conditions when the employer determines continued work would be inefficient or nonproductive;
- (7) To make and enforce rules and regulations not inconsistent with this ordinance or a collective bargaining agreement;
- (8) To take actions to carry out the mission of government in situations of emergency; or
- (9) To transfer, assign and schedule employees.

(c) Nothing contained in this Article shall be construed to limit the discretion of the employer voluntarily to discuss with the representatives of its employees any matter concerning the employer's exercise of any of the enumerated rights set forth in sub-section 33-80(b) above, but such matters shall not be subject to bargaining.

(d) Collective bargaining shall commence no later than November 1, preceding the beginning of a fiscal year for which there is no contract between the employer and the certified representative and shall be concluded on January 20. The resolution of an impasse in collective bargaining shall be completed by February 1. These time limits may be waived only by prior written consent of the parties.

(e) Any collective bargaining agreement which contains a provision for automatic renewal or extension shall be void in its entirety unless such renewal or extension requires the consent of both parties. No agreement shall be valid if it extends for less than one year or for more than three years. All agreements shall become effective July 1 and end on June 30.

(f) Any collective bargaining agreement shall become effective only after ratification of the agreement by the public employer and the certified representative, except as provided in subsection 33-81(b)(7). A certified representative may provide its own rules for ratification procedures.

(g) A ratified agreement shall be binding on the employer and the certified representative, and shall be reduced to writing and executed by both parties. Any term or condition thereof which requires an appropriation of funds or enactment, repeal or modification of a County law shall be timely submitted to the County Council by the employer and the employer shall make a good faith effort to have such term or condition implemented by Council action. On or before April 25, the County Council shall indicate by a majority, consisting of four (4) of the Council members, its intention to appropriate or otherwise implement the agreement, or its intention not to do so, and shall state its reasons for any intent to reject any part or parts of the agreement. In the event the Council indicates its intention to reject, it shall designate a representative to meet with the parties and present the Council's views

in their further negotiations. This representative shall also participate fully in stating the Council's position in any ensuing impasse procedure. The parties shall thereafter meet as promptly as possible in an attempt to negotiate an agreement acceptable to the Council. Either of the parties may initiate the impasse procedure set forth in Section 33-81. The results of the negotiation or impasse procedure shall be submitted to the council on or before May 10. Any agreement shall provide either for automatic reduction or elimination of such conditional wage and/or benefits adjustments if the Council fails to take such action or if funds are not appropriated or if a lesser amount is appropriated.

(End of new draft language)

Mr. Hillman said that he understands that this language is acceptable to the Fraternal Order of Police (FOP) with the exception of (b) Employer Rights (9), to transfer, assign and schedule employees; however, Chief Crooke takes the position that this is essential to the operation of the Police Department. Chief Crooke must have the power to run the Department in order to give proper police protection at all times and to assign officers that can best respond to certain duties at certain places and times. Subsection (c) provides for discussing any matter of employer's rights that are not the subject of bargaining.

In response to Councilman Scull's question about how to distinguish the effect on employees of the employer's exercise of rights, Mr. Driesen stated that, for example, a change in assignment to respond to a domestic relations squabble is not negotiable because it goes to the mission of the Department, but the effect is that it will impose additional strain on the officer & he may need access to a psychiatrist to deal with the effects of this additional strain. The proposal under (a)(7) is the response to the management decision, not negotiable, providing for the right to negotiate about the effects of the employer's exercise of his rights.

Mr. Hilliard added that there is no question about management's right to layoff employees from the Department, but the employee organization might negotiate how the layoff will be accomplished. Mr. Rovner indicated that this language is in the federal statute enacted in 1978.

In answer to Councilman Scull's question about Sec. 33-81, Impasse Procedure and the use of an Impasse Neutral, to be chosen by agreement or through the American Arbitration Association, Mr. Driesen stated that this provision is designed to assure that trade-offs will occur by requiring the Impasse Neutral to choose between the two final offers of the negotiating parties.

In response to Councilman Scull's request for how Mr. Katz justified his change of position from one of saying that the Police had no desire to arbitrate interest issues to the opposite position, Mr. Katz explained that the sponsor of the petition, CELE, was made up of members from the FOP, but not the entire membership. There was confusion on the part of the sponsors of the bill and a second petition drive was required. When the matter came before the Council at the end of September 1980, the leadership of CELE felt it was speaking for the Police in taking a position for binding arbitration on financial matters and not on interest issues. Six days later, on October 6, 1980, at a meeting of the FOP, the members took up this issue and the minutes of that meeting clearly reflect that the FOP was in favor of including interest arbitration; CELE sponsors of the bill went along with the FOP position and it was thereafter reflected that way. For the record, the FOP officials met with the Executive prior to the election to make clear to him that the Police were asking for interest arbitration also.

Mr. Driesen noted that this matter is no longer relevant as this bill does not provide for interest arbitration. The FOP has acquiesced that the provisions of this bill are probably workable; it simply provides for arbitration that binds the Executive in his recommendations to the Council which retains its freedom as to what it has control over. The bill does not represent binding arbitration in the classic sense.

Councilman Scull addressed the vagueness which he believes is embodied in the term "effect" in (a)(7) of the bill, saying that this may cause difficulties in working out disputes and that he believes that precision and specificity is desirable relative to what can be carried to arbitration.

Mr. Driesen responded that there is in this bill a specific forum and procedure for resolving controversies over what is subject to arbitration & what is not. FOP acquiesced in the management rights enumerated, but the effects of those

rights becomes negotiable. He is opposed to listing all the things that the Police cannot bargain about, Mr. Drisesn said, in response to a suggestion from Mr. Scull.

Councilman Fosler commended the Executive for the changes in the subject bill, since the last worksession, from virtually everything being subject to bargaining, either as a mandatory requirement or permitted to be, to a clear line being drawn between what is, and is not, subject to bargaining. He also commended the FOP for agreeing with these changes. Mr. Fosler believes it is good to have this framework provided for in the legislation to eliminate ambiguities and protect the rights of both the police employees and management. Working conditions are difficult to define, especially the effect on employees of the employer's exercise of rights; however, he believes this is a legitimate concept. He asked for an explanation of how this provision, (a)(7), would work, noting that there may be disagreement as to what the effects are.

Mr. Hillman responded with an example from the private sector. Management has the right to close a plant, but it has an obligation to discuss the effects of the plant closing with the employees; i.e., will the employees be given a chance to transfer? will they receive severance pay? and so forth. The plant may be closed even though it takes a longer time to negotiate the effects.

Mr. Fosler observed that, in addition to this provision, he would encourage more discussion outside the bargaining process, as addressed in paragraph (c), since he said employees know a great deal about the practical problems involved in running the Department. He commented that there needs to be a distinction between the collective bargaining process and the general process of managing the Police Department, for which the police officers should also be consulted. He cautioned about the potential danger of establishing an adversary relationship during the bargaining process which might carry over as a general attitude that pervades the Department. Mr. Fosler said he believes the way the legislation is written will go a long way to set the proper tone in a department where everyone has a common interest in having the department run effectively.

Mr. Katz responded to Mr. Fosler's question about FOP's concern regarding inclusion of transfer, assignment and scheduling of employees as an employer right, saying that the Police bill of rights speaks to transfers

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and that scheduling has been a major sticking point over the past years. He noted that, at the Wheaton Station, actions were taken against management in this regard and that the Police feel that scheduling is a very important item to bring to the bargaining table.

Councilwoman Crenca suggested that Councilmembers read the minutes when the matter was before the Council at the time the amendment for binding arbitration was being prepared for the ballot. The intent at that time was grievance arbitration, but then there was a "slip twist cup and lip." What happened was unfortunate, but Mr. Katz acted honorably. Ms. Crenca said a tape of that meeting would be helpful to her.

Ms. Crenca said that the Police tried to make a point and no one wanted to listen so the Council must address the results. She asked whether the state of the art includes specific expressions regarding matters affecting health & safety of employees and the effect on employees of the employer's exercise of rights; or is language being used in the bill that will lead to an impasse during negotiations.

Mr. Hillman responded that there is a body of law which has elaborated on what was meant by management rights and effects on employees, such as the effects on employees of closing a plant, mentioned earlier. There is a means of a neutral person deciding these questions, should they arise. He observed that there will always be ambiguities regarding the effects on employees of the exercise of management rights, but there is a way to resolve them.

Councilman Scull stated that it appears to him that the changes that have come from the Executive are at the request of the Police and represent some weakening of the County's positions. The employer has rights regarding promotions which are vital; in the first draft this was not subject to bargaining, now the right is to set standards.

Mr. Hillman said he tried to sharpen what was meant with respect to eligibility for promotion, etc. One of the things that might be discussed with the employees is how much time will be allotted before an examination. It is essential to reserve standards to management, but employees may want to discuss the amount of notice before a test to allow for study time. Favoritism in selection, if alleged, is something that would be taken to the Merit System Protection Board through the grievance procedure. Mr. Driesen added that through the discussion process, fruitful results are hoped for,

even though bargaining is not permissible. The FOP acquiesced, reluctantly, with respect to bargaining about transfers, assignments and schedules which are clearly working conditions and the Executive has listened to many of its concrete ideas and there has been cooperation; professionals have tried to reach compromises on the provisions of the legislation that all parties can live under. The new language for Section 33-80 is the Executive's response to these discussions. Other changes from the last draft include combination of provisions to eliminate redundancies. Under (c) the voluntary discussions will not lead to these matters being placed in a bargaining context; this provision must be read in context with the section on employer rights.

Mr. Rovner said that Chief Crooke wants to be able to discuss matters with the FOP, as a sounding board, but cannot be restricted by a binding agreement in the exercise of his duties as head of the Police Department; scheduling clearly must be left out of the contract.

Councilwoman Spector suggested that the Council address a main area of concern which is the relationship of the recommendation of the Executive to the process the Council enters into. His recommendation is binding on the Executive, but not on the Council.

Mr. Hillman indicated that paragraph (g) in the new language submitted addresses the Council's intention to appropriate for the agreement reached, or not to do so. There was concern that the Executive and the certified representative of the FOP would reach an agreement either through collective bargaining, or the impasse procedure, and that that agreement for financial, or other, reasons would not be acceptable to the Council. Because it was unsatisfactory to have the Council vote not to implement the agreement, or not to provide the funds in the budget, and have the Police be without a contract for the ensuing fiscal year, there has been a provision written into the legislation that the Council will be asked, prior to April 25th, to look at the agreement with respect to its being funded in the budget and give the negotiating parties some idea of whether the contract negotiated is something the Council can accept, or will reject, and its reasons, so the negotiating parties can go back and address any concerns the Council may have. The Council can address each item in the contract, if it so desires, but in the final analysis, it is the funding which must be acted upon. This takes place after the arbitration process has been completed; the agreement is conditioned upon the Council's action.

To Ms. Spector's comment that this procedure places the Council in a situation where it has to address the matter late in its budget deliberations, after not having been a party to the negotiations and after the negotiations have already taken place, Mr. Hillman indicated that the Council will get the same amount of time as for the remainder of the budget. The negotiations must be finished on February 1 and on April 25th the Council must say whether the parties must go back to the negotiating table. Ms. Spector responded that this is different in that there is not a contract with other employees, except for the MCPS employees, and that is somewhat different.

Ms. Spector observed that the Council might need to set up a separate procedure to give the subject contract some priority in its budget deliberations.

Some of the points made in the detailed discussion of the bill were that it is a 3-year agreement for which the Council may not want to commit for the last two years; the parties to the negotiation can respond to that; the agreement is conditioned upon the Council's appropriating funds; the Council can only appropriate by the year, except in certain CIP items; the Council could send a letter to the negotiating parties, but discussion with a Councilmember or member of its staff would be more helpful; the bill provides no means of binding the Council which gives the FOP pause as it may give up certain things to gain a 3-year agreement; the negotiating parties could come to the Council earlier than the 15 days specified; it would be unwise to have the Council meet with the parties in the bargaining process; if the Council maintains an attitude of cooperation, the process will work, and this is something the Council, educated in labor relations, is likely to do; a Council representative could spend more time finding out about problems than the Council body could devote to the matter; the difference should be delineated between bargaining and expressing views to provide guidance since the Council is involved in implementing what is bargained; and generally reviewed the provisions of the bill as written.

Mr. Potter called attention to Section 305 of the Charter which provides that 5 affirmative votes are required for approval of the aggregate operating budget excluding the WSSC, the bi-County portion of the N-NCPPC and the WSTC which exceeds the budget for the preceding year by a percentage increase greater than that of the CPI for all urban consumers for the Washington metropolitan area

for the preceding calendar year. This is for the entire budget, but it gives the minority important leverage.

Ms. Spector added that the Executive's veto of line items might also affect this process, should he veto something else in order to fund the negotiated agreement with the Police.

President Potter indicated that the Council should consider both of these possibilities.

Councilman Scull asked where the matter stands legally if these procedures do not work out. Is there assurance that the Police will not go to court to overturn the whole procedure? Is there a commitment on the part of the Police to live with these procedures?

Mr. Driesen responded that the FOP is an organization, he and Mr. Katz are its attorneys. He could not make that commitment for the organization. After the recess in the worksession, Mr. Driesen said he had discussed the FOP position with the president of that organization. The FOP still feels strongly about the exclusion of sergeants. He is not in a position to say that the FOP will not litigate that position. He is representing a democratic organization which has a constitutional right to litigate.

Mr. Potter noted that this Council cannot commit for future Councils either.

Mr. Scull asked how this bill relates to the present grievance procedures.

Mr. Driesen responded that grievance procedures are negotiated in this contract; outside the contract, grievances relating to promotions would be heard before the Merit System Protection Board.

Mr. Katz indicated that there is a law enforcement bill of rights and there is a separate procedure for disciplinary matters to be heard by a trial board of 3 police officers convened by the department, pursuant to Article 27 of the Annotated Code of Maryland.

It was the consensus of the Council to indicate in the middle of page three that the Council majority generally consist of 4 Councilmembers; this will be clearer in view of the move to increase the Council to 9 members.

The Council concluded its discussion of Section 33-80 of the bill and turned to discussion of Sec. 33-81, impasse procedure. Mr. Hillman explained this provision to choose someone whom everyone trusts early and have him committed to the time constraints. After mediation, if agreement

still cannot be reached, the impasse neutral will choose the last best offer of the employer or union. The impasse neutral has limited freedom with factors set forth on which he can base his decision. The permanent umpire has a five-year appointment. Both will be paid on a fee basis under contract.

Councilmembers expressed no problems with the subject procedure.

President Potter told Councilmembers that he is assuming agreement if Councilmembers do not raise objections.

President Potter summed up, saying that consensus had been reached on the collective bargaining procedures and impasse procedures. An editorial change was made regarding "Council majority" with respect to collective bargaining, to omit defining Council majority on page 3, by striking "consisting of 4 of the Councilmembers."

The Council then reviewed Section 33-82, prohibited practices. Mr. Hillman observed that he thought there was disapproval of inserting the word "lawful" on page 28, line 2, which he feels creates a loophole.

Upon motion of Councilman Gudis, duly seconded and without objection, the Council voted to omit the word "unlawful" on page 28, line 2.

Mr. Driesen confirmed for Mr. Fosler that if the Executive is ruled against by the impasse neutral or umpire, he is bound not to oppose the agreement. He said that the union cannot be deprived of its first amendment rights, but the likelihood of its coming to the Council and trying to overturn an agreement is slim.

Councilman Fosler noted as a possible problem the possibility of the Council's receiving requests for legislation, from either side, to do by legislation what it cannot do by agreement.

Mr. Potter pointed to the wisdom of Councilmembers not committing themselves on matters under negotiation until they know the contents of the entire package to prevent unnecessary misunderstandings, as have occurred with MCEA.

Without objection, on page 28, line 6, the "or" was deleted.

Mr. Driesen stated that (b) (5) through (9) are criminal matters and there is no place for them in labor relations law; they are totally unwarranted in this context, in his opinion.

Mr. Rovner noted that there is no guarantee that the FOP will be here forever and these are alternative means of redress.

President Potter asked that Mr. Hillman provide the Council with additional information as to where (b) (5) through (9) appear in law and then the Council will examine the matter carefully.

Mr. Hillman explained that lines 8-14, page 31, of the bill were struck because the Executive was reminded that after the initial draft of the "meet and confer" law, the use of official time for these activities is allowed. This language has been taken out, but use of official time can be addressed in negotiations.

Without objection, on page 27, line 18, the words "or other" were deleted.

Mr. Hillman explained that, on page 31, lines 15-22, expression of views, that language was taken from the National Labor Relations Act; it is in almost every State and local law with which he is familiar.

Mr. Driesen offered, in connection with discussion of paragraph (3) on page 27, encouraging or discouraging membership in any employee organization by discrimination in regard to hiring, tenure, wages, hours or conditions of employment, to submit language that could appear as a proviso under Section 23.

Mr. Potter indicated that Council would await receipt of that language for its consideration.

With respect to Section 33-84, prohibition of strikes, Mr. Hillman said the normal way to enforce "no strike" is to get an injunction and then the court would normally impose criminal contempt penalties which would take care of this problem.

Mr. Driesen said there is not going to be a strike from the standpoint of the employer, He would not want another enforcement provision in this law; if a strike occurs, there should be a centralized response to it.

Mr. Potter noted that the permanent umpire would impose penalties for any violations, after the fact.

Without objection, the Council did not strike "paid by the County" and insert "borne 50% by the County and 50% by the employee organizations," as suggested.

Mr. Potter indicated, that after the Council has received the material requested during this worksession, he will schedule a short worksession or time for a short worksession at the time the bill is placed on the agenda for final reading.

With respect to Sec. 33-80 (a)(4), hours and working conditions, including the availability and use of personal patrol vehicles, Councilman Fosler said he thought personal patrol vehicles were not to be included as an item for negotiation. He feels this is different from other items included in that list and asked why it should be included; this item has never been negotiated in the past. He sees the use of patrol vehicles as a way of attempting to increase the police presence & to be able to respond more quickly to calls for service for which, in turn, the police would get the use of the vehicles; this use was not begun as a police benefit.

Mr. Hillman noted that Councilwoman Gelman's earlier objection was only that this item be listed as a working condition, rather than as a benefit.

President Potter added that the police vehicles are not only included under working conditions, but are a benefit to the community. The Council's conclusion was that the use of the vehicles is a bonus for the public and, in a sense, a substitute for some wages for the Police; the visibility benefit to the public cannot be eliminated.

Mr. Rovner stated that the Executive has taken the position that the vehicles should be within the scope of bargaining. It was included because, when there was a conflict between the general and the specific, the specific controlled. Those vehicles are a precise means by which the police accomplish their work. In addition, the police have arranged facets of their personal life around the use of these vehicles and, because it is such a major item in their lives, the Executive has decided that when their use is called into question, there should be collective bargaining. The moment the existing equation shifts, before the vehicles are taken away, the Executive believes there should be negotiation, since they also constitute a major benefit to the policemen.

Mr. Fosler asked that it be made clear that the expectation is that these personal patrol vehicles are of equal value to the officers and the public; if this comes into question, bargaining follows.

President Potter asked that the requested material be furnished the Council in a week or so. Upon its receipt he will schedule this legislation for final reading.

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Re: SB-935 - A Bill Entitled Community  
Action Agencies

Mr. Andrew Mansinne, Director of the Office of Legislative Oversight,  
presented the following memorandum for the Council's consideration:

At the request of Councilmember Spector and Mr. McDonell, I have reviewed Senate Bill 935 and have discussed its contents and implications with Harvey McConnell, Department of Family Resources and Jim Farmer of our own Community Action Agency. In my opinion, Council should support this Bill.

For several years, the Montgomery County Community Action Agency (CAA) has received grants directly from the Federal Community Services Administration. Within the state, there are currently 12 CAA's; Montgomery County and Baltimore City are public Community Action Agencies, the remaining ten are private CAA's. Last year when the Community Services Administration was abolished, Congress stipulated that funds in the form of Federal Community Services Block Grants would be distributed directly to the states from a new Office of Community Services, within the Department of Health and Human Services. For FY 82, 90% of these funds distributed to the State must be used to fund the Community Action Agencies (i.e. the twelve currently organized in the State). The remaining 10% of the funds are for administration and discretionary projects. However, beginning in FY 83, the State can distribute the Federal Community Services Block Grant to any limited purpose agency with the result that the current CAA's could receive no funds.

Senate Bill 935 would guarantee the continued distribution of at least 90% of the Federal Community Services Block Grant Funds to the Community Action Agencies (see Bill lines 189-203).

Upon motion of Councilman Gudis, duly seconded and adopted without objection, the Council authorized Mr. Potter to sign and send the following letter to the Chairman of the Senate Budget and Taxation Committee:


**Members of the Montgomery County Council join with the County Executive, Charles W. Gilchrist, in support of Senate Bill 935, A Bill Entitled Community Action Agencies.**

**We believe that community action agencies serve a tremendous service to local governments whether they are public or private. The low-income citizens of our great State rely on these agencies to act as liaison between themselves and their governments, to assist them in identifying needs, accessing available services, and assisting them to become self-sufficient and independent.**

**Please recommend Senate Bill 935 to the full Senate for approval.**

The meeting adjourned at 6:45 P.M.

ATTEST:

  
Anna P. Spates, Secretary  
of the County Council for  
Montgomery County, Maryland